

REMINDER

WORKSESSION

**6:00 p.m.**

Prior to the  
Regular Meeting



**City of Radford Council Agenda  
Meeting Number 8 of F.Y. 2017-2018**

**January 8, 2018 at 7:00 p.m.  
10 Robertson St., Radford, VA**

**6:00 WORK SESSION-F.Y. 2017 Audit Presentation**

**CALL TO ORDER  
PLEDGE OF ALLEGIANCE  
INVOCATION**

**MINUTES APPROVAL:** December 11, 2017 Regular Meeting

**PUBLIC HEARINGS:** Ordinance # 1696 – Cigarette Ordinance  
Ordinance # 1699 - Amendment to Zoning Ordinance

**OLD BUSINESS:** None

**CITIZEN COMMENTS ON PUBLIC MATTERS:**

(Please state your name for the record – Please limit comments to 3 minutes or less)

**NEW BUSINESS:**

1. Cigarette Ordinance # 1696
2. Health Department Agreement
3. Transit – Automatic Passenger Count Agreement

**CITY MANAGER COMMENTS  
COUNCIL MEMBER COMMENTS**

**CLOSED SESSION:** Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments, under Virginia Code Section 2.2-3711 (A) (1).

**Adjourn**

***Future Meetings:  
January 22, 2018 Regular Meeting, 7:00 pm***



as well as Virginia Tech and Radford University. Mitigation opportunities for Radford focus on Little River Dam, Water System threats, flooding, storm water detention and additional storm drainage basin map improvements.

Many items in the 2012 plan has been accomplished including storm drainage map improvements, removal of the cross-tie yard adjacent to the New River, implementation of Code Red, study and improvements to Little River Dam, mutual aid agreements, storm drainage improvements and an inventory of City trees.

Christy Straight, a Planner from the New River Valley Regional Commission, presented an overview of the report.

**ACTION:** Mr. Gropman moved to approve the Hazardous Mitigation Resolution as presented, Dr. Harshberger seconded the motion.

**VOTE:**

AYES: Mr. Gropman, Dr. Harshberger, Mr. Marshall, Mr. Turk, Mayor Brown

NAYES: None-0

**SUBJECT: Radford High School Foundation Lease**

**SUMMARY:** The City of Radford has leased the property on George Street, adjacent to the Radford Recreation Center, to the Radford High School Foundation, Inc. since 2004. The agreement was established to help foster support, private donations and construction of a baseball field on the 5+ acre City owned site. The original lease was established in 2004 for a five-year term. It was renewed in September, 2008 under new conditions for another five-year term, renewed in October, 2014 for one year and renewed in October, 2015 for a two-year term. The Foundation has requested an additional renewal term with the City through December 31, 2020, to continue its fund raising and project development. The ongoing lease has worked out well in the management, maintenance and development of the facility.

**ACTION:** Mr. Marshall moved to approve the Foundation Lease Resolution as presented, Dr. Harshberger seconded the motion.

**VOTE:**

AYES: Mr. Gropman, Dr. Harshberger, Mr. Marshall, Mr. Turk, Mayor Brown

NAYES: None-0

**SUBJECT: Mutual Aid Agreement with Montgomery County**

**SUMMARY:** The City has Mutual Aid Agreements with our area partners and localities in providing public safety services. The Radford Fire Department began providing Emergency Medical Services in December and modifications in the agreement are needed to recognize the new service.

The Agreement updates mutual aid with our partner departments in the jurisdiction of Montgomery County for shared personnel, equipment and volunteers for both fire and rescue services. The previous agreement reflected our previous contract with Carilion.

**ACTION:** Mr. Marshall moved to approve the Mutual Aid Agreement Resolution as presented, Mr. Turk seconded the motion.

**VOTE:**

**AYES:** Mr. Gropman, Dr. Harshberger, Mr. Marshall, Mr. Turk, Mayor Brown

**NAYES:** None-0

**PRESENTATION:**

**SUBJECT:** Bus Stop Safety

**SUMMARY:** The New River Valley Metropolitan Planning Organization (MPO) and the local transit system owners and operations have been working together on a study to evaluate accessibility and safety at area bus stops. The research was conducted by the New River Valley Regional Commission on fifty stops. System users were surveyed and University partners engaged in development of the study. Priorities are established to improve connectivity, enhance ADA accessibility and promote bus stop amenities. The Report was presented by Michael Gottfredson.

**PUBLIC HEARING:**

**SUBJECT:** Comprehensive Plan

**SUMMARY:** Kevin Bird with the New River Valley Regional Commission presented an overview of the Comprehensive Plan, before the Public Hearing was opened.

\*The Public Hearing has been advertised as required.

\*Planning Commission had a quorum present:

Tracy Howard

Guy Gilmore

Scott Armentrout

Annie Pearce

Ryan Watson

Mayor Brown opened the Public Hearing at 7:57.

No Comments

Mayor Brown closed the Public hearing at 7:58.

**CITIZEN COMMENTS:**

**None**

**NEW BUSINESS:**

**SUBJECT: Comprehensive Plan**

**SUMMARY:** A Comprehensive Plan is a document used to provide guidance for a community's future development as it relates to physical, social and economic factors. The Plan is required by state code to guide both manmade and environmental goals associated with the areas of historic and natural resources, economic development, transportation, public services and facilities, parks and recreation, housing and land use. The Planning Commission has been working on the update of the plan for the past several years with the New River Valley Regional Commission.

The 2017 Comprehensive Plan is complete and ready for public hearing. A Joint Public Hearing was scheduled at the request of the Radford Planning Commission and has been advertised, as required. The Plan has been on the City Website and a printed copy available at the Radford Public Library and City Administrative Offices.

**ACTION:** Dr. Harshberger moved to receive the recommendation of the Planning Commission, Mr. Turk seconded the motion.

**VOTE:**

**AYES:** Mr. Gropman, Dr. Harshberger, Mr. Marshall, Mr. Turk, Mayor Brown

**NAYES:** None-0

**ACTION:** Mr. Gropman moved to adopt the Comprehensive Plan as presented, Mr. Turk seconded the motion.

**VOTE:**

**AYES:** Mr. Gropman, Dr. Harshberger, Mr. Marshall, Mr. Turk, Mayor Brown

**NAYES:** None-0

**SUBJECT: Radford High School Foundation Armory Proposal**

**SUMMARY:** The former Radford Armory site has gone back into service following roof replacement, asbestos removal and interior improvements. The Radford High School Foundation has requested that the City Council consider a proposal to use a \$75,000 donation as "seed" funding for investment in the Armory for use as a multi-purpose athletic fieldhouse. The Foundation would like to discuss a partnership with the City of Radford and the School Division. The facility has a large gymnasium and several classroom spaces in the 11,500 sq ft structure.

**ACTION:** Mr. Marshall moved to approve the proposal from the Foundation, with the stipulation that the City Staff will work on a Letter of Intent for use of the property to be signed by both the Foundation and City, joining the two in a public/private partnership, Mr. Turk seconded the motion.

**VOTE:**

**AYES:** Mr. Gropman, Dr. Harshberger, Mr. Marshall, Mr. Turk, Mayor Brown

**NAYES:** None-0

**SUBJECT: Award Contract for Bucket Truck**

**SUMMARY:** The F.Y. 2017/2018 Radford City Budget included a provision for the purchase of a 2018 Aerial Device with Cab and Chassis (Bucket Truck) for the Electric Department. The scheduled purchase replaces a twelve-year-old, 2007 Ford Bucket Truck (Unit 112), and is needed to insure reliability, as well as safety of employees and property.

The City received only one qualifying bid from Altec Industries in the amount of \$139,011. The City has had good experience with this company and its products and recommends the award of the contract to Altec. The bid met all required specifications and is less than the original budget projection. Another bid was received from Terex, but was late and did not meet specifications for consideration.

**ACTION:** Dr. Harshberger moved to award the contract to Altec Industries in the amount of \$139,011, Mr. Marshall seconded the motion.

**VOTE:**

AYES: Mr. Gropman, Dr. Harshberger, Mr. Marshall, Mr. Turk, Mayor Brown

NAYES: None-0

**SUBJECT: Schedule a Public Hearing for Ordinance 1696**

**SUMMARY:** The State changed the process for handling refunds associated with unused or damaged cigarette tax stamps by allowing a purchaser/business to receive a full refund. The legislation was effective July 1, 2017 by HB 1950. The refunds are processed by the local Commission of the Revenue.

The local Cigarette Tax Ordinance needs to be amended to reflect the new state requirements associated with refunds. A public hearing is required and can be accommodated on January 8, 2018.

**ACTION:** Mr. Marshall moved to schedule the public hearing for the January 8, 2018 meeting. Mr. Gropman seconded the motion.

**VOTE:**

AYES: Mr. Gropman, Dr. Harshberger, Mr. Marshall, Mr. Turk, Mayor Brown

NAYES: None-0

**SUBJECT: Schedule a Public Hearing Lease Renewal King Company**

**SUMMARY:** The City of Radford owns a .42 acre parcel of property at the intersection of West Main Street and Walker Street. The property has been leased to the King Company since 1993. The twenty-year lease expired and the Principal of the company, Dr. Bill King, has requested that

the lease be renewed. He is working on a proposal for the City Council on the amount of the lease and the length of the term. A public hearing is required to consider a new lease and can be accommodated on January 8, 2018. The lease accommodates the forty-one parking spaces that support the use of the adjacent commercial building.

**ACTION:** Dr. Harshberger moved to schedule the public hearing for the January 8, 2018 meeting. Mr. Gropman, seconded the motion.

**VOTE:**

**AYES:** Mr. Gropman, Dr. Harshberger, Mr. Marshall, Mr. Turk, Mayor Brown

**NAYES:** None-0

**SUBJECT: Appropriation Ordinance #1691.19-Recreation Department**

**SUMMARY:** The Recreation Department has requested \$8,419 from their "restricted" account to purchase blinds for the fitness rooms. The new blinds will prevent glare, reduce heat, are easier to maintain and are a quality product. The request was endorsed by the Recreation Commission at its November meeting.

**ACTION:** Mr. Marshall moved to approve the Appropriation Ordinance 1691.19 on the first reading, Mr. Turk second the motion.

**VOTE:**

**AYES:** Mr. Gropman, Dr. Harshberger, Mr. Marshall, Mr. Turk, Mayor Brown

**NAYES:** None-0

**ACTION:** Mr. Marshall moved to approve Appropriation Ordinance 1691.19 and dispense with the second reading, Mr. Turk second the motion.

**VOTE:**

**AYES:** Mr. Gropman, Dr. Harshberger, Mr. Marshall, Mr. Turk, Mayor Brown

**NAYES:** None-0

**SUBJECT: Appropriation Ordinance #1691.20- Municipal Building**

**SUMMARY:** One of the heating and cooling system units has quit working at the Municipal Building. The 15 ton unit is approximately twenty years old. An appropriation is needed to replace the system, reconnect the ducts, connect all electric and drain lines, as well as remove the old unit. The cost of the new unit and associated work is \$20,120 and would be funded from reserves.

**ACTION:** Dr. Harshberger moved to approve the Appropriation Ordinance 1691.20 on the first reading, Mr. Turk second the motion.

**VOTE:**

**AYES:** Mr. Gropman, Dr. Harshberger, Mr. Marshall, Mr. Turk, Mayor Brown

**NAYES:** None-0

**ACTION:** Dr. Harshberger moved to approve Appropriation Ordinance 1691.20 and dispense with the second reading, Mr. Turk second the motion.

**VOTE:**

AYES: Mr. Gropman, Dr. Harshberger, Mr. Marshall, Mr. Turk, Mayor Brown

NAYES: None-0

**SUBJECT: Ordinance 1697-Holiday Bonus**

**SUMMARY:** Ordinance #1697 authorizes a bonus to recognize the hard work, dedication and performance of our employees over the past year in keeping cost down, providing high quality service and meeting corporate goals. The bonus would provide \$150 to full-time employees and \$40 to our part-time employees

**ACTION:** Mr. Marshall moved to approve the Ordinance 1697 on the first reading, Mr. Gropman second the motion.

**VOTE:**

AYES: Mr. Gropman, Dr. Harshberger, Mr. Marshall, Mr. Turk, Mayor Brown

NAYES: None-0

**ACTION:** Mr. Marshall moved to approve Ordinance 1697 and dispense with the second reading, Mr. Gropman second the motion.

**VOTE:**

AYES: Mr. Gropman, Dr. Harshberger, Mr. Marshall, Mr. Turk, Mayor Brown

NAYES: None-0

**ACTION:** Mr. Gropman moved to approve the Appropriation Ordinance 1691.21 on the first reading, Mr. Turk second the motion.

**VOTE:**

AYES: Mr. Gropman, Dr. Harshberger, Mr. Marshall, Mr. Turk, Mayor Brown

NAYES: None-0

**ACTION:** Dr. Harshberger moved to approve Appropriation Ordinance 1691.21 and dispense with the second reading, Mr. Gropman second the motion.

**VOTE:**

AYES: Mr. Gropman, Dr. Harshberger, Mr. Marshall, Mr. Turk, Mayor Brown

NAYES: None-0

**CITY MANAGERS COMMENTS:**

Mr. Ridpath stated that the Hydro work is almost complete and should be finished in early 2018. Mr. Ridpath also wished everyone a Merry Christmas and Happy New Year.

**CITY COUNCIL COMMENTS:**

Dr. Harshberger stated that he thinks the idea of a River Museum should be researched and worked actively on for Radford.

Mr. Gropman stated that the Workforce Development Council wants Radford to become an ACT Work Ready Community (NCRC), there will be more to come in the coming months.

Mayor Brown said he has the opportunity to go to a presentation put on by the schools and loved seeing the new and innovative technology and ways of learning Radford City Schools is incorporating into the classroom.

Mayor Brown also said he was disappointed the parade had to be cancelled, Radford had over 155 participants, but when scheduling there were conflicts with alternate rain dates, and we as a community will live and learn. The 2018 Parade is already being planned.

Mr. Marshall made a motion to adjourn the meeting at 8:27 seconded by Mr. Turk.

**VOTE:**

AYES: Mr. Gropman, Dr. Harshberger, Mr. Marshall, Mr. Turk, Mayor Brown

NAYES: None-0

**ATTEST:** \_\_\_\_\_

Jennifer G. Wilder, Clerk of Council

**ORDINANCE NO. 1696**

**AN ORDINANCE AMENDING AND REENACTING THE CITY OF RADFORD'S  
LOCAL CIGARETTE TAX ORDINANCE, IN ARTICLE XVIII - CIGARETTE TAX,  
SECS. 35-481 THROUGH 35-492, OF CHAPTER 35 - FINANCE AND TAXATION,  
CODE OF ORDINANCES, CITY OF RADFORD, VIRGINIA**

**WHEREAS**, Title 58.1 Taxation, § 58.1-1 *et seq.*, of the Code of Virginia, 1950 as amended (Code of Virginia), sets forth the statutory provisions and laws for state and local taxation enacted in the Commonwealth of Virginia, and in Subtitle I thereof, a cigarette tax is imposed in the Commonwealth of Virginia, pursuant to Chapter 10, §§ 58.1-1000, *et seq.*, and in Subtitle III thereof, local tax statutory provisions and laws are set forth in Chapter 38, §58.1-3800, *et seq.*, and in Article 7, § 58.1-3830 through 58.1-3832, of Chapter 38, the enabling authority and statutory provisions are set forth for imposing, regulating, enforcing, and administering a local cigarette tax by localities, by adopting a local ordinance, as more specifically set forth therein; and all of the aforesaid general and specific Code of Virginia sections recited herein are incorporated herein by reference and made a part hereof; and

**WHEREAS**, the City has a local cigarette tax ordinance and imposes, enforces and administers, by ordinance, in accordance with the enabling authority and provisions for local taxes in the aforesaid and collective provisions of Article 7, § 58.1-3830 through § 58.1-3832, of Chapter 38, and Chapter 10, §§ 58.1-1000, *et seq.*, of Title 58.1, Code of Virginia; and constituted and designated as the City's Cigarette Tax Ordinance, as set forth and provided for in Article XVIII – Cigarette Tax, Secs. 35-481 through 35-492, of Chapter 35 - Finance and Taxation, of the Code of Ordinance, City of Radford, Virginia, 1992, pursuant to a duly adopted Ordinance No. 1476, last adopted and approved by the Radford City Council on June 14, 2004, which Ordinance No. 1476, amended and reenacted the City's prior Cigarette Tax Ordinance provisions, in accordance with the local and state laws and regulations in effect in the Commonwealth of Virginia; and

**WHEREAS**, since the date of the City's last amended and adopted Cigarette Tax Ordinance No. 1476 on June 14, 2004, the General Assembly of the Commonwealth of Virginia has made a number of additional statutory changes and amendments to the aforesaid recited sections of the Code of Virginia regarding requirements for local cigarette tax ordinance provisions and laws, for imposing, enforcing and administering a local cigarette tax, and in order to comply with the amended legislative enactments and statutory provisions imposed upon the City by the Commonwealth of Virginia, since Ordinance No. 1476 was last adopted on June 14, 2004, the City desires to amend and reenact the City's existing Cigarette Tax Ordinance, in Article XVIII, Secs. 35-481 through 35-492, inclusive, of Chapter 35 - Finance and Taxation, in the Code of Ordinances, City of Radford, Virginia, as hereinafter more specifically set forth in this Ordinance No. 1696, amending and reenacting the City's former Cigarette Tax Ordinance No. 1476, in accordance with the most current local and state laws and regulations in effect in the Commonwealth of Virginia, pursuant to the aforesaid statutory provisions and authority set forth in the Code of Virginia.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RADFORD, VIRGINIA**, that the City's local Cigarette Tax Ordinance, in Article XVIII, Secs. 35-481 through 35-492, of Chapter 35 – Finance and Taxation, Code of Ordinances, City of Radford, Virginia, is hereby amended and reenacted as follows:

***(See Attached Revised and Amended Article XVIII, Cigarette Tax, Secs. 35-481 through 35-492. Full text to be inserted prior to Final Adoption)***

THIS ORDINANCE shall become effective upon the date of its adoption, on this \_\_\_\_day of \_\_\_\_\_, 2018.

First Reading: January 8, 2018

Motion:  
Second:

Recorded Vote: Mr. Gropman:  
Mr. Marshall:  
Dr. Harshberger:  
Mr. Turk:  
Mayor Brown:

Second Reading: \_\_\_\_\_, 2018

Motion:  
Second:

Recorded Vote: Mr. Gropman:  
Mr. Marshall:  
Dr. Harshberger:  
Mr. Turk:  
Mayor Brown:

ATTEST: \_\_\_\_\_  
Melissa Skelton, Deputy City Clerk

## **ARTICLE XVIII. - CIGARETTE TAX**

### **Sec. 35-481. - Definitions.**

Except where the context clearly indicates a different meaning, or as otherwise defined in the definitions set forth in § 58.1-1000, *et seq.*, of the Code of Virginia, as amended, and which Virginia Code section is incorporated herein by reference, and made a part hereof, and any amendments thereunto, the following words and phrases shall, for purposes of this article, have the meanings respectively ascribed to them in this section:

*Carton* means 10 packs of cigarettes, each containing 20 cigarettes or eight packs, each containing 25 cigarettes.

*Cigarette* means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (ii) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filter, or its packaging and labeling, is likely to be offered to, or purchased, by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filter, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (i) of this definition. The term "cigarette" includes "roll-your-own" tobacco, which means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette", "0.09 ounces of "roll-your-own" tobacco shall constitute one individual cigarette."

*City* means the City of Radford, Virginia.

*Commissioner of revenue* means the Commissioner of Revenue for the City of Radford, Virginia, or his or her sworn deputy or assistant.

*Dealer* means every manufacturer, jobber, wholesale dealer or other person who supplies a seller within the city with cigarettes.

*Package* means any container, regardless of the material used in its construction, in which separate cigarettes are placed without such cigarettes being placed into any container within the package. Packages are those containers of cigarettes from which individual cigarettes are ordinarily taken when they are consumed by their ultimate user.

*Pack* means a package containing either 20 or 25 cigarettes.

*Person* means an individual, firm, company, group, agency, society, syndicate, agency, cooperative, partnership, corporation, joint stock company, unincorporated or incorporated association or group, limited liability company, syndicate, trust, trustee, receiver, referee, assignee, estate, fiduciary, conservator, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency or instrumentality thereof, or any combination thereof.

The word "person", pursuant to § 8.01, Code of Virginia, as amended, includes an individual, his executor, administrator, or other personal representative, or a corporation, partnership, association or other legal or commercial entity, whether or not a citizen or domiciliary of the Commonwealth of Virginia, and whether or not organized under the laws of the Commonwealth of Virginia. As applied to a partnership, corporation, joint stock company, unincorporated or incorporated association or group, limited liability company, or other joint venture, or any other legal or commercial entity and any successor, representative, agent, agency or instrumentality thereof, or any combination thereof, means and includes the partners, members, managers, officers and directors thereof.

*Purchaser* means every person to whom title to any cigarettes is transferred by a seller for any valuable consideration within the city.

*Sale* means any act or transaction, regardless of the method or means employed, including through the use of vending machines and other mechanical devices and/or by gift or incentive, whereby title to any cigarettes shall be transferred from the seller to any other person within the corporate limits of the city.

*Seller* means every person who transfers title to any cigarettes, or in whose place of business title to any cigarettes is transferred, within the corporate limits of the City, for any purpose other than resale.

*Stamp* means a small gummed piece of paper or decalcomania to be sold by the City Treasurer and to be affixed, manually or by machine, to every package of cigarettes sold at retail in the city, under the authorization of the Commissioner of Revenue.

*Treasurer* means the treasurer for the City of Radford, Virginia, or his or her sworn deputy.

**Sec. 35-482. - Levied; amount; tax additional to other taxes.**

In addition to all other taxes of every kind now or hereafter imposed by law, there is hereby levied and imposed by the city an excise tax on the sale of cigarettes equivalent to \$0.15 on each pack or package of cigarettes. The tax shall be paid by the seller, if not previously paid, and collected in the manner and at the time provided for in this article, provided that the tax payable for each pack or package of cigarettes sold within the city shall be paid but once. The tax hereby levied shall not apply to free distribution of sample cigarettes in packages containing five or fewer cigarettes.

**Sec. 35-483. - Methods of payment.**

The tax imposed by this article shall be evidenced by the use of a stamp, purchased from the city treasurer and affixed by the dealer or seller to every package of cigarettes to be sold within the city. The tax shall be paid at the time the stamps are purchased from the treasurer. Every dealer and every seller shall have the right to buy such stamps from the treasurer and to affix the same to packages of cigarettes as provided in this article.

**Sec. 35-484. - Preparation and sale of stamps generally.**

For the purpose of making stamps available for use, the commissioner of revenue shall prescribe, prepare and furnish the treasurer, and the treasurer shall sell stamps of such denomination and in such quantities as may be deemed necessary for the payment of the taxes imposed by this article. In the sale of such stamps, the treasurer shall allow a discount of \$.005 per stamp sold to cover the costs incurred by the dealer or seller in affixing the stamps to packages of cigarettes. However, the treasurer shall add to the denominational value of such stamps and the dealer or seller shall pay to the Treasurer any added amount equal to the actual cost of shipping and handling.

**Sec. 35-485. - Duties of dealers and sellers.**

- (a) Every dealer in cigarettes is hereby required and it shall be his duty to purchase such stamps at the office of the treasurer, as shall be necessary to pay the tax levied and imposed by this article, and to affix or cause to be affixed a stamp or stamps of the of the monetary value prescribed by this article to each pack or package of cigarettes prior to delivering or furnishing such cigarettes to any seller.
- (b) Every seller is hereby required and shall examine each pack or packages of cigarettes, prior to exposing the same for sale, for the purposes of ascertaining whether such pack or packages have the proper stamps affixed thereto or imprinted thereon, as required by this article. If upon such examination unstamped or improperly stamped packs or packages of cigarettes are discovered, the seller shall either:
  - (1) Purchase and affix to such pack or packages of cigarettes the proper stamps covering the tax imposed by this article; or,
  - (2) Immediately notify the dealer who provided the cigarettes and, upon such notification, such dealer shall forthwith either affix to the unstamped or improperly stamped pack or packages the proper amount of stamps or shall replace such pack or packages with others to which stamps have been properly affixed.
- (c) In the event any seller elects to purchase and affix stamps before offering cigarettes for sale, the dealer delivering and furnishing such cigarettes shall not be required to purchase and affix stamps to such cigarettes so sold or furnished; provided that any such dealer shall, on the day following the day of such delivery, file with the commissioner of revenue a copy of the delivery memorandum showing the name and address of such seller and the quantity and type of cigarettes so delivered and furnished.

**Sec. 35-486. - Monthly reports and record keeping.**

- (a) It shall be the duty of each dealer to report monthly to the commissioner of the revenue on or before the 20<sup>th</sup> day of each calendar month the following separate information:

- (1) The quantity of stamped cigarettes sold or delivered during the period requested by the commissioner of the revenue to:
    - a. Each dealer;
    - b. Each seller;
    - c. Each separate person or place of business within the city.
  - (2) The quantity of stamps on hand, both affixed and unaffixed, on the first day of the period of request and the quantity of stamps or stamped cigarettes received during the period; and,
  - (3) Such further information as the commissioner of revenue may require for the proper administration and enforcement of this article for the determination of the exact number of cigarettes in the possession of each dealer or seller.
- (b) Upon request by the commissioner of revenue, any seller shall provide the commissioner of revenue, in writing, with the name and address of the dealer who provides the seller with cigarettes.
- (c) It shall be the duty of every dealer and seller in the city to maintain and keep, for a period of three (3) years, complete records of the number of packages of cigarettes delivered or sold by such dealer or seller and to make all such records available for examination by the commissioner of revenue upon demand at any and all reasonable times.

**Sec. 35-487. - Assessment of unpaid taxes.**

- (a) When, upon examination and audit of any invoices, records, books, canceled checks or other memoranda touching on the purchase, sale, receipt, storage or possession of cigarettes taxed herein, any dealer, seller, or other person liable for the tax is unable to furnish evidence to the commissioner of revenue of sufficient tax payments and stamp purchases to cover cigarettes which were sold, used, stored, received, purchased or possessed by them, a rebuttable *prima facie* presumption shall arise that such cigarettes were received, sold, used, stored, purchased or possessed by him without the proper tax having been paid. The commissioner of revenue shall, from the results of such examination and audit based upon such direct or indirect information available, assess the tax due and unpaid.
- (b) The dealer, seller, or other person liable for the tax shall be notified by certified mail or hand delivery of such deficiency, and such tax, penalty and interest assessed shall be due and payable within ten (10) days after notice of such deficiency has been issued by the commissioner of revenue.

**Sec. 35-488. - Display of stamps; seizure.**

- (a) Stamps shall be placed upon each pack or package of cigarettes in such manner as to be readily visible to the purchaser and shall be affixed to each pack or package of cigarettes.

- (b) Any seller found to possess, prior to being offered for sale, more than six (6) cartons of cigarettes within the city, without the tax paid stamp affixed and who is not in the process of affixing such stamps thereto, shall be presumed to be in possession of untaxed cigarettes in violation of this article. If such person has received the cigarettes within the preceding 48 hours and has not offered them for sale, such presumption shall not apply.
- (c) In accordance with § 58.1-3832 (3), of the Code of Virginia, as amended, whenever the commissioner of revenue shall discover or determine cigarettes in quantities of more than six (6) cartons are found within the city, and which are subject to the tax imposed by this article, and upon which the tax has not been paid, or upon which stamps have not been affixed, as required in this article, the commissioner of revenue is hereby authorized and empowered to forthwith seize and confiscate such cigarettes, if:
- (1) They are in transit, and are not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and of the consignee or purchaser, and the brands and quantity of cigarettes so transported, or are in transit and accompanied by a bill of lading or other document which is false or fraudulent, in whole or in part; or
  - (2) They are in transit and are accompanied by a bill of lading or other document indicating:
    - (i) A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such cigarettes or tobacco products on which the taxes imposed by such other jurisdiction have not been paid, unless the tax of the state or district of destination has been paid and the said cigarettes or tobacco products bear the tax stamps of the state or district; or
    - (ii) A consignee or purchaser in the Commonwealth of Virginia but outside the taxing jurisdiction of the city who does not possess a state sales and use tax certificate, a state retail tobacco license and, where applicable, both a business license and retail tobacco license issued by the city or local jurisdiction of destination; or
  - (3) They are not in transit and the tax has not been paid, nor have approved arrangements for payment been made, provided that this subparagraph shall not apply to cigarettes in the possession of distributors or public warehouses which have filed notice and appropriate proof with the taxing jurisdiction that those cigarettes are temporarily within the taxing jurisdiction and will be sent to consignees or purchasers outside the jurisdiction in the normal course of business.

- (d) Any vending machine located within the city containing cigarettes upon which the stamp has not been affixed or containing cigarettes placed so as to not allow visual inspection of the stamp through the viewing area as provided for by the vending machine manufacturer shall be presumed to contain untaxed cigarettes in violation of this article. If a vending machine does not allow for visual inspection of the stamp, the commissioner of the revenue is hereby authorized to direct the owner to open the machine in order to determine whether the cigarettes contained therein are stamped.
- (e) Any cigarettes, coin operated vending machines, counterfeit stamps, or other property found in violation of this article shall be declared contraband goods and may be seized and confiscated by the commissioner of the revenue. In addition to any tax due, the dealer, seller, or other person liable for the tax possessing such untaxed cigarettes shall be subject to civil and criminal penalties herein provided.
- (f) In lieu of seizure and confiscation, the commissioner of revenue may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of such seal from a vending machine by any unauthorized person shall be a violation of this article. Nothing in this article shall prevent the seizure of any vending machine at any time after it is sealed.
- (g) All cigarette vending machines shall be plainly marked with the name, address and telephone number of the owner of said machine.
- (h) Any seized and confiscated cigarettes, vending machines or other property used in the furtherance of any illegal evasion of the tax may be disposed of by sale or other method deemed appropriate by the commissioner of the revenue thirty (30) days after notice to the person from whom the items were seized and any other known holder of a property interest in the property. The notice shall state that the owner or holder of a property interest may challenge the proposed sale and forfeiture by written appeal to the commissioner of revenue, at least five (5) days prior to the date of the proposed sale. The appellant shall have the right to personally appear before the commissioner of revenue, or his or her designee, and to present any relevant evidence or witnesses, to question any witness for the city, and to assert any available affirmative defense. The commissioner of revenue shall render a written decision on the appeal within ten (10) working days. If a timely appeal is filed, no sale or forfeiture shall occur unless and until the commissioner of revenue renders a decision rejecting the appeal.
- (i) No credit from any sale of cigarettes, vending machines or other property seized shall be allowed toward any tax, penalties or interest assessed.

**Sec. 35-489. - Refund for unused or damaged stamps.**

- (a) Should any person, after acquiring from the treasurer any stamps provided for in this article, cease to be engaged in a business necessitating the use of the stamps, or should the stamps be damaged to the extent that such stamps are unusable, such person shall be entitled to a refund of the purchase price of any such stamps, without penalties or additional fees, upon presenting the unused or damaged

stamps to the commissioner of revenue and furnishing the commissioner of revenue with an affidavit evidencing and verifying, to the satisfaction of the commissioner of revenue, that the stamps were acquired by such person and have not in any manner been used, and the reason for requesting the refund for any such unused or damaged stamps. For purposes of this section, "purchase price" shall be the net purchase price, allowing for any discounts received at the time of the original purchase of the stamps.

- (b) Any and all refunds for unused or damaged stamps provided for under this Section may be made on vouchers approved by the commissioner of the revenue. Such refunds shall be charged against the sums collected for the sale of said stamps. Payment to the person requesting the refund shall be made within thirty (30) days of the request.

#### **Sec. 35-490. - Rules and regulations.**

The commissioner of revenue is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to the methods and means of cancellation of the stamps provided for in this article and to any and all other matters pertaining to the administration and enforcement of the provisions of this article. The commissioner of revenue is further authorized and empowered to examine the books, records, invoices, papers and any and all cigarettes in and upon any premises where the same are placed, stored, sold, offered for sale or displayed for sale by a seller. The commissioner of revenue is authorized to delegate any of the powers and duties set out in this article to one or more deputies or assistants, except as may be prohibited by law.

#### **Sec. 35-491. - Violations of article generally.**

- (a) Any person violating any of the provisions of this article shall be guilty of a Class I misdemeanor. Conviction and punishment for such violation shall not relieve any person from the payment of any tax, interest or penalty imposed by this article; and.
- (b) Any person who fails to pay any cigarette tax at the time it is due shall pay a late payment penalty in the amount of ten percent (10%) per month; and
- (c) Any person who fails to pay any cigarette tax at the time it is due shall pay interest on the tax found to be overdue and unpaid at the rate of three-quarters of one percent (0.75) per month; and.
- (d) In addition, any person who shall perform any fraudulent act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article shall be required to pay a penalty in the amount of fifty percent (50%) of any tax found to be overdue and unpaid; and
- (e) Each day's violation of, or noncompliance with, any of the provisions of this article shall be and constitute a separate offense.

**Sec. 35-492. - Violations of article prohibited; acts enumerated.**

(a) It shall be unlawful and a violation of this article for any person:

- (1) To perform any act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article or of any part thereof, or for any dealer or seller, with intent to violate any provision of this article, to fail or refuse to perform any of the duties imposed upon him under the provisions of this article, or to fail or refuse to obey any lawful order which the commissioner of revenue may issue under this article.
- (2) To falsely or fraudulently make, forge, alter or counterfeit any stamp, invoice or reports, to procure or cause to be made, forged, altered or counterfeited any such stamp, or knowingly and willfully to alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps.
- (3) To sell any cigarettes upon which the tax imposed by this article has not been paid and upon which evidence of payment thereof is not shown on each pack or package of cigarettes.
- (4) To reuse or refill with cigarettes any pack or package from which the cigarettes have been removed, for which the tax has been paid.
- (5) To remove from any pack or package of cigarettes any stamp with intent to use or cause the same to be used after the same have already been used, or to buy, sell or offer for sale or give away any used, removed, altered or restored stamps, to any person, or to reuse any stamp which has theretofore been used for evidence of the payment of any tax prescribed in this article, or, except as to the treasurer, to sell or offer to sell any stamp provided for herein.
- (6) To possess, store, use, authorize or approve the possession, storage or use for sale or resale of any cigarettes in quantities of more than six (6) cartons upon which the stamp has not been affixed; or
- (7) To transport, authorize or approve the transportation of any cigarettes, in quantities of more than six (6) cartons into or within the city upon which the stamp has not been affixed, in violation of Sec. 35-488 ((b), and/or (c) of this article.
- (8) To violate the duties of dealers and sellers, set forth in Sec. 35-485 of this article.
- (9) To fail to comply with the monthly reports and record keeping requirements set forth in Sec. 35-486 of this article.
- (10) To fail to comply with the display of stamps requirements set forth in Sec. 35-488, or to fail to comply with or to violate any of the subsections enumerated in Sec. 35-488 of this article.

**Memorandum**

**To:** Mayor Brown, Vice-Mayor Harshberger, Members of City Council

**From:** Melissa Skelton, Zoning Administrator

**Date:** January 2, 2018

**Subject:** Joint Public Hearing

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The Planning Commission requested a joint public hearing with City Council to receive comments regarding amendment to Division 1, Section 120.1-23 (1) of the Radford Zoning Ordinance. The amendment will add the terminology to allow Recreation Vehicle Parks under a Special Use Permits. The current ordinance allows for the following:

- (1) Parks, playgrounds and other recreation facilities, when such uses are owned and operated by a local not-for-profit agency;

The amended ordinance will add "Recreation Vehicle Park", and omits the statement "when such uses are owned and operated by a local not-for-profit agency".

Staff and the Planning Commission have be approached by Tony Landreth, regarding the development of a Recreational Vehicle Resort. This project was previously approved for a Special Use Permit back in 1997 by George Harvey, but was never implemented. Mr. Landreth currently has this property under contract and his desire is to continue the project as originally planned. Once the amendment to the Ordinance is complete, he will begin the special use permit process.

Enclosed is a copy of the Ordinance. Please advise if you have any questions.

Thank you

**cc:** Mr. David Ridpath, City Manager

**Zoning Amendment Ordinance for CD Conservation District**

**ORDINANCE NO. 1699**

**AN ORDINANCE TO AMEND AND REENACT IN THE ZONING ORDINANCE OF THE CITY OF RADFORD IN CHAPTER 120.1, DIVISION 1, SECTIONS 120.1-23; OF THE CODE OF ORDINANCES, CITY OF RADFORD, VIRGINIA**

**THE CITY COUNCIL OF THE CITY OF RADFORD, HEREBY ORDAINS** that the Code of Ordinances of the City of Radford, Virginia, set forth in Chapter 120.1 the "Zoning Ordinance" shall be and the same is hereby amended and reenacted by providing for and making revisions and amendments to Division 1, Sections 120.1-23, the CD Conservation District as follows:

**Sec. 120.1-23. - Uses and structures permitted with a special use permit.**

The following uses and structures shall be allowed in the CD Conservation District with an approved special use permit, as set forth in Article IX of this chapter:

- (1) Parks, playgrounds, Recreation Vehicle Park and other recreation facilities;**
- (2) Golf courses and country clubs, public or private, including accessory sale and serving of food and beverages and sale of golfing supplies and equipment;
- (3) Cemeteries;
- (4) Fire stations and rescue squad facilities;
- (5) Itinerant vendor;
- (6) Living quarters, in the main building, of owner-occupied single-family dwellings, when such living quarters are occupied by persons employed on the premises.

Should any article, section, subsection, or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the constitutionality of this ordinance as a whole or any part thereof, other than the part declared invalid or unconstitutional. Should this Ordinance be in conflict with any other City Ordinance or policy, this Ordinance shall prevail.

This Ordinance was duly considered after duly advertised public hearings held on \_\_\_\_\_ and \_\_\_\_\_ at meetings of the Planning Commission and the Radford City Council, and was thereafter adopted by the City Council of the City of Radford, Virginia, at a regular meetings of the City Council held on \_\_\_\_\_. The Ordinance shall become effective upon the date of its adoption. The City Council voted in the following manner:

**First Reading:**

**Motion:**

**Second:**

**Recorded Vote:**      Mr. Gropman:  
                             Dr. Harshberger:  
                             Mr. Marshall:



**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF HEALTH**

**STATEMENT OF AGREEMENT WITH the City Council of Radford City**

Under this agreement, which is created in satisfaction of the requirements of § 32.1-31 of the *Code of Virginia* (1950), as amended, the Virginia Department of Health, over the course of one fiscal year, will pay an amount not to exceed \$274,252 from the state general fund to support the cooperative budget in accordance with appropriations by the General Assembly, and in like time frame, the City Council of Radford City will provide by appropriation and in equal quarterly payments a sum of \$100,778 local matching funds and \$0 one-hundred percent local funds for a total of \$100,778 local funds. These joint funds will be distributed in timely installments, as services are rendered in the operation of the Radford City Health Department, which shall perform public health services to the Commonwealth as indicated in Attachment A(1.), and will perform services required by local ordinances as indicated in Attachment A(2.). Payments from the local government are due on the third Monday of each fiscal quarter.

The term of this agreement begins July 1, 2017. This agreement will be automatically extended on a state fiscal year to year renewal basis under the terms and conditions of the original agreement unless written notice of termination is provided by either party. Such written notice shall be given at least 60 days prior to the beginning of the fiscal year in which the termination is to be effective. Any increase or decrease in funding allocation shall be made by an amendment to this agreement.

The parties agree that:

1. Under this agreement, as set forth in paragraphs A, B, C, and D below, the Commonwealth of Virginia and the Virginia Department of Health shall be responsible for providing liability insurance coverage and will provide legal defense for state employees of the local health department for acts or occurrences arising from performance of activities conducted pursuant to state statutes and regulations.
  - A. The responsibility of the Commonwealth and the Virginia Department of Health to provide liability insurance coverage shall be limited to and governed by the Self-Insured General Liability Plan for the Commonwealth of Virginia, established under § 2.2-1837 of the Code of Virginia. Such insurance coverage shall extend to the services specified in Attachments A(1.) and A(2.), unless the locality has opted to provide coverage for the employee under the Public Officials Liability Self-Insurance Plan, established under § 2.2-1839 of the Code or under a policy procured by the locality.
  - B. The Commonwealth and the Virginia Department of Health will be responsible for providing legal defense for those acts or occurrences arising from the performance of those services listed in Attachment A(1.), conducted in the performance of this contract, as provided for under the Code of Virginia and as provided for under the terms and conditions of the Self-Insured General Liability Plan for the Commonwealth of Virginia.

C. Services listed in Attachment A(2.), any services performed pursuant to a local ordinance, and any services authorized solely by Title 15.2 of the Code of Virginia, when performed by a state employee, are herewith expressly exempted from any requirements of legal defense or representation by the Attorney General or the Commonwealth. For purposes of assuring the eligibility of a state employee performing such services for liability coverage under the Self-Insured General Liability Plan of the Commonwealth of Virginia, the Attorney General has approved, pursuant to § 2.2-507 of the Code of Virginia and the Self-Insured General Liability Plan of the Commonwealth of Virginia, the legal representation of said employee by the city or county attorney, and the City Council of Radford City hereby expressly agrees to provide the legal defense or representation at its sole expense in such cases by its local attorney.

D. In no event shall the Commonwealth or the Virginia Department of Health be responsible for providing legal defense or insurance coverage for local government employees.

2. Title to equipment purchased with funds appropriated by the local government and transferred to the state, either as match for state dollars or as a purchase under appropriated funds expressly allocated to support the activities of the local health department, will be retained by the Commonwealth and will be entered into the Virginia Fixed Asset Accounting and Control System. Local appropriations for equipment to be locally owned and controlled should not be remitted to the Commonwealth, and the local government's procurement procedures shall apply in the purchase. The locality assumes the responsibility to maintain the equipment and all records thereon.

3. Amendments to or modifications of this contract must be agreed to in writing and signed by both parties.

Marissa J. Levine, MD MPH, FAAFP  
State Health Commissioner  
Virginia Department of Health

David Ridpath  
City Manager  
Radford City

Date

Date

Approved as to form by the Office of the Attorney General on August 29, 2011.

Attachments: Local Government Agreement, Attachment A(1.)  
Local Government Agreement, Attachment A(2.)

LOCAL GOVERNMENT AGREEMENT, ATTACHMENT A(1.)

VIRGINIA DEPARTMENT OF HEALTH  
COMMUNITY HEALTH SERVICES

BASIC PUBLIC HEALTH SERVICES TO BE ASSURED BY LOCAL HEALTH DEPARTMENTS  
INCOME LEVEL A IS DEFINED BY THE BOARD OF HEALTH TO BE MEDICALLY INDIGENT (32.1-11)

For Each Service Provided, Check Block for Highest Income Level Served			
COLLABORATIVE COMMUNITY HEALTH IMPROVEMENT PROCESS	Income A only	Defined by Federal Regulations	All (specify income level if not ALL)
Assure that ongoing collaborative community health assessment and strategic health improvement planning processes are established. To include public health, health care systems and community partners. As provided for in §32.1-122.03 Code Link-32.1-122.03; State Health Plan Link <u>Virginia Plan for Well-Being 2016-2020</u>			X
COMMUNICABLE DISEASE SERVICES	Income A only	Defined by Federal Regulations	All (specify income level if not ALL)
Immunization of patients against certain diseases, including Childhood Immunizations As provided for in 32.1-46 Code Link-32.1-46			X
Sexually transmitted disease screening, diagnosis, treatment, and surveillance 32.1-57, Districts may provide counseling Code Link-32.1-57			X
Surveillance and investigation of disease 32.1-35 and 32.1-39 Code Links-32.1-35, 32.1-39, 32.1-43			X
HIV/AIDS surveillance, investigation, and sero prevalence survey 32.1-36, 32.1-36.1, 32.1-39 Code Links-32.1-36, 32.1-36.1, 32.1-39			X
Tuberculosis control screening, diagnosis, treatment, and surveillance 32.1-49, 32.1-50.1, and 32.1-54 Code Links-32.1-49, 32.1-50, 32.1-50.1			X
FAMILY PLANING SERVICES	Income A only	Defined by Federal Regulations	All
Clinic services including drugs and Contraceptive supplies Family Planning Population Research Act of 1970, Title X Code Link-32.1-77, 42 U.S.C 300 et seq., and 42 CFR Part 59		X	
Pregnancy testing and counseling Family Planning Population Research Act of 1970, Title X Code Link-32.1-77, 42 U.S.C. 300 et seq., and 42 CFR Part 59		X	

LOCAL GOVERNMENT AGREEMENT, ATTACHMENT A(1.)

VIRGINIA DEPARTMENT OF HEALTH  
COMMUNITY HEALTH SERVICES

BASIC PUBLIC HEALTH SERVICES TO BE ASSURED BY LOCAL HEALTH DEPARTMENTS  
INCOME LEVEL A IS DEFINED BY THE BOARD OF HEALTH TO BE MEDICALLY INDIGENT (32.1-11)

CHILD HEALTH SERVICES	Income A only	Defined by Federal Regulations	All
Children Specialty Services; diagnosis, treatment, follow-up, and parent teaching 32.1-77, 32.1-89 and 32.1-90 Code Links <u>32.1-77</u> , <u>32.1-89</u> , <u>32.1-90</u>			X
Screening for genetic traits and inborn errors of metabolism, and provision of dietary supplements Code Links <u>32.1-65</u> , <u>32.1-67</u> , <u>32.1-68</u>			X
Well child care up to age 5 Board of Health Code Link <u>32.1-77</u>	X		
WIC : Federal grant requirement Public Law 108-265 as amended, Child Nutrition Act of 1986; Child Nutrition and WIC Reauthorization Act 2009 Code Link <u>32.1-351.2</u>		X	
EPSDT: DMAS MOA Social Security Act section 1905(r) (5) Code Link <u>32.1-11</u>			X
Blood lead level testing Code Link <u>32.1-46.1</u> , <u>32.1-46.2</u>			X
Outreach, Patient and Community Health Education Code Link <u>32.1-11</u> , <u>32.1-11.3</u>			X
Community Education Code Link <u>32.1-11</u> , <u>32.1-23</u>			X
Pre-school Physicals for school entry Code Link <u>22.1-270</u>			X
Disabled disability Waiver Screenings DMAS MOA Code Link <u>32.1-330</u>			X
Services for Children with Special health care needs Title V, Social Security Act Code Link <u>32.1-77</u>			X
Child restraints in motor vehicles Code Link <u>46.2-1095</u> , <u>46.2-1097</u>			X
Babycare: DMAS MOA			X
MATERNAL HEALTH SERVICES	Income A only	Defined by Federal Regulations	All
Prenatal and post partum care for low risk and intermediate risk women , Title V, Social Security Act Code Link <u>32.1-77</u>		X	
Babycare Services: DMAS MOA		X	
WIC: Federal grant requirement Public Law 108-265 as amended, Child Nutrition Act of 1986; Child Nutrition and WIC Reauthorization Act 2009 Code Link 42 U.S.C §1786 and 7CFR Part 26		X	

LOCAL GOVERNMENT AGREEMENT, ATTACHMENT A(1.)

VIRGINIA DEPARTMENT OF HEALTH  
COMMUNITY HEALTH SERVICES

ENVIRONMENTAL HEALTH SERVICES  
BASIC PUBLIC HEALTH SERVICES TO BE ASSURED BY LOCAL HEALTH DEPARTMENTS

<p>The following services performed in accordance with the provisions of the Code of Virginia, the regulation of the Board of Health and/or VDH agreements with other state or federal agencies. .</p>	
<p><b>Ice cream/frozen desserts:</b> Under the agency's Memorandum of Agreement (MOA) with the Virginia Department of Agriculture and Consumer Services (VDACS), the local health department is responsible for initiating the issuance, suspension, reinstatement and revocation of permits for all frozen desserts plants which are an integral part of any premises, including Grade "A" milk plants, hotels, restaurants, and mobile units where frozen desserts are frozen or partially frozen or dispensed for retail sale.</p>	X
<p><b>Investigation of communicable diseases:</b> Pursuant to §§ 32.1-35 and 32.1-39 of the Code of Virginia, the local health director and local staff are responsible for investigating any outbreak or unusual occurrence of a preventable disease that the Board of Health requires to be reported. Code Links-32.1-35, 32.1-39</p>	X
<p><b>Marinas:</b> Pursuant to § 32.1-246 of the Code of Virginia, local health department staff are responsible for permitting marinas and other places where boats are moored and is responsible for inspecting them to ensure that their sanitary fixtures and sewage disposal facilities are in compliance with the Marina Regulations (12VAC5-570-10 et seq.) Code Link-32.1-246</p>	X
<p><b>Migrant labor camps:</b> Pursuant to §§ 32.1-203-32.1-211 of the Code of Virginia, local health departments are responsible for issuing, denying, suspending and revoking permits to operate migrant labor camps. Local health departments also must inspect migrant labor camps and ensure that the construction, operation and maintenance of such camps are in compliance with the Rules and Regulations Governing Migrant Labor Camps (12VAC5-501-10 et seq.). Code Links-32.1 Chapter 6 Article 6</p>	X
<p><b>Milk:</b> Pursuant to §§ 3.2-5206, 3.2-5208 of the Code of Virginia and the agency's MOA with VDACS, the local health department is responsible for issuing, denying, suspending and revoking permits for Grade "A" milk processing plants which offer milk and or milk products for sale in Virginia. Local health department are also responsible for the inspection of Grade "A" milk plants for compliance with the Regulations Governing Grade "A" Milk (2VAC5-490-10). Code Links- 3.2-5206, 3.2-5208</p>	X
<p><b>Alternative discharging sewage systems:</b> Pursuant to § 32.1-164(A) of the Code of Virginia, local health department are responsible for issuing, denying and revoking construction and operation permits for alternative discharging systems of serving individual family dwellings with flows less than or equal to 1,000 gallons per day on a monthly average. Local health departments are also required to conduct regular inspections of alternative discharging systems in order to ensure that their construction and operation are in compliance with the Alternative Discharging Sewage Treatment Regulations for Individual Family Dwellings (12VAC5-840-10 et seq.). Code Link-32.1-164</p>	X
<p><b>Onsite sewage systems:</b> Pursuant to § 32.1-163 et seq. of the Code of Virginia, local health department staff is responsible for reviewing and processing site evaluations and designs of onsite sewage systems in accordance with applicable state regulations and may perform such evaluations and designs as allowed. Local health department staff is also responsible for issuing, denying and revoking construction and operation permits for conventional and alternative onsite sewage systems. Local health department staff are responsible for assuring that onsite sewage systems are inspected at time of construction for compliance with the Sewage Handling and Disposal Regulations (12VAC5-610-20 et seq.; "SHDR") and the Alternative Onsite Sewage System Regulations (12VAC5-613-10 et seq.; "AOSS Regulations"); local health department staff may perform such inspections as required. Local health department staff is also responsible for assuring the performance, operation, and maintenance of onsite sewage systems are in compliance with the SHDR and AOSS Regulations. Code Link-32.1-163</p>	X
<p><b>Rabies:</b> Pursuant to § 3.2-6500 et seq. of the Code of Virginia, the local health department is responsible for investigating complaints and reports of suspected rabid animals exposing a person, companion animal, or livestock to rabies. Code Link- 3.2-6500</p>	X

LOCAL GOVERNMENT AGREEMENT, ATTACHMENT A(1.)

VIRGINIA DEPARTMENT OF HEALTH  
COMMUNITY HEALTH SERVICES

ENVIRONMENTAL HEALTH SERVICES

BASIC PUBLIC HEALTH SERVICES TO BE ASSURED BY LOCAL HEALTH DEPARTMENTS

<b>Restaurants/eating establishments:</b> Pursuant to § 35.1-14 of the Code of Virginia, local health departments are responsible for issuing, denying, renewing, revoking and suspending permits to operate food establishments. In addition, local health departments are required to conduct at least one annual inspection of each food establishment to ensure compliance with the requirements of the Food Regulations (12VAC5-421-10 et seq.). These regulations include requirements and standards for the safe preparation, handling, protection, and preservation of food; the sanitary maintenance and use of equipment and physical facilities; the safe and sanitary supply of water and disposal of waste and employee hygiene standards. Code Link- 35.1-14	X
<b>Sanitary surveys:</b> The local health department is responsible for assuring that surveys are conducted of properties which include soil evaluations and identification of potential sources of contamination; local health department staff may perform such inspections as required. The surveys are conducted in order to determine site suitability for onsite sewage systems, alternative discharging systems and wells. Code Link-32.1-11	X
<b>Single home sewage discharge</b> Code Link-32.1-164	X
<b>Hotels/Motels:</b> In accordance with § 35.1-13 of the Code of Virginia, local health department staff is responsible for issuing, denying, revoking and suspending permits to operate hotels. The local health department is responsible for conducting inspections of hotels to ensure compliance with the Hotel Regulations (12VAC5-431-10 et seq.). These regulations include requirements and standards for physical plant sanitation; safe and sanitary housekeeping and maintenance practices; safe and sanitary water supply and sewage disposal and vector and pest control. Code Link-35.1-13	X
<b>Water supply sanitation-Inspection of Water Supplies</b> Code Link- 15.2-2144	X
<b>Wells:</b> Pursuant to § 32.1-176.4, and the resulting authority provided by the Board, local health departments are responsible for issuing, denying and revoking construction permits and inspection statements for private wells. Local health departments are also responsible for inspecting private wells to ensure that their construction and location are in compliance with the Private Well Regulations. (12VAC5-630-10 et seq.) Code Link-32.1-176.4	X
<b>Homes for adults:</b> The local health department, at the request of the Department of Social Services (DSS) will inspect DSS-permitted homes for adults to evaluate their food safety operations, wastewater disposal and general environmental health conditions. (22VAC40-80-160(B)(3))	X
<b>Juvenile Justice Institutions:</b> Pursuant to § 35.1-23 of the Code of Virginia and the agency's memorandum of understanding with the Department of Corrections, local health departments are responsible for conducting at least one annual unannounced inspection of juvenile justice institutions in order to evaluate their kitchen facilities, general sanitation and environmental health conditions. Code Link-35.1-23	X
<b>Jail Inspections:</b> Pursuant to § 53.1-68 of the Code of Virginia and the agency's memorandum of understanding with the Department of Corrections, local health departments are responsible for conducting at least one annual unannounced inspection of correction facilities in order to evaluate their kitchen facilities, general sanitation and environmental health conditions. Code Link-53.1-68	X
<b>Daycare centers:</b> At the request of DSS will inspect DSS-permitted daycare centers to evaluate their food safety operations, wastewater disposal and general environmental health conditions. (22VAC40-80-160(B)(3))	X
<b>Radon</b> Pursuant to § 32.1-229, local health department may assist VDH Central Office with Radon testing and analysis.      Code Link-32.1-229.	X
<b>Summer camps/ Campgrounds:</b> Pursuant to §§ 35.1-16 and 35.1-17 of the Code of Virginia and the corresponding regulations, local health departments are responsible for issuing, denying, and revoking permits to operate summer camps and campgrounds. The local health department is responsible for conducting inspections of summer camps and campgrounds not less than annually to ensure that their construction, operation and maintenance are in compliance with the Regulations for Summer Camps (12VAC5-440-10 et seq.) and the Rules and Regulations Governing Campgrounds (12VAC5-450-10 et seq.). Code Links-35.1-16, 35.1-17	X

LOCAL GOVERNMENT AGREEMENT, ATTACHMENT A(1.)

**VIRGINIA DEPARTMENT OF HEALTH  
COMMUNITY HEALTH SERVICES**

**OTHER PUBLIC HEALTH SERVICES  
BASIC PUBLIC HEALTH SERVICES TO BE ASSURED BY LOCAL HEALTH DEPARTMENTS**

The following services performed in accordance with the provisions of the Code of Virginia, the regulations of the Board of Health and/or the policies and procedures of the State Department of Health	
Medicaid Nursing Home Screening DMAS MOA Code Link- 32.1-339	X
Comprehensive Services Act 2.2-5201-2.2-5211 Code Link- 2.2-5201, 2.2-5211	X
Vital Records (Death Certificates) Code Link- 32.1-254, 32.1-255, 32.1-272	X
Early Intervention Services Community Policy and Management Teams (CPMT) Interagency Coordinating Council (Infants/Toddlers) Code Link- 2.2-5305, 2.2-5306	X
Immunizations for maternity and post-partum patients Code Link- 32.1-11, 32.1-325, 54.1-3408	X
AIDS Drug Assistance Program (ADAP) Code Link- 32.1-11	X
Emergency Preparedness and Response Code Link- 32.1-42, 32.1-43 et seq., 32.1-229	X
HIV Counseling, Testing and Referral Code Link- 32.1-37.2	X

LOCAL GOVERNMENT AGREEMENT, ATTACHMENT A(1.)

VIRGINIA DEPARTMENT OF HEALTH  
COMMUNITY HEALTH SERVICES

OPTIONAL PUBLIC HEALTH SERVICES

For Each Service Provided, Check Block for Highest Income Level Served			
	Income A only	Defined by Federal Regulations	All
<b>COMMUNICABLE DISEASE SERVICES</b>			
Foreign Travel Immunizations			X
Other:			
<b>CHILD HEALTH SERVICES</b>			
School health services			
Sick child care			
Other:			
<b>MATERNAL HEALTH SERVICES</b>	Income A only	Defined by Federal Regulations	All
Funds for deliveries			
Funds for special tests and drugs			
Diagnosis, treatment, and referral for gynecological problems			X
Other:			
<b>FAMILY PLANNING SERVICES</b>	Income A only	Defined by Federal Regulations	All
Nutrition Education			X
Preventive Health Services			X
Pre-Conception Health Care			X
Other:			

LOCAL GOVERNMENT AGREEMENT, ATTACHMENT A(1.)

VIRGINIA DEPARTMENT OF HEALTH  
COMMUNITY HEALTH SERVICES

OPTIONAL PUBLIC HEALTH SERVICES

For Each Service Provided, Check Block for Highest Income Level Served			
GENERAL MEDICAL SERVICES	Income A only	Defined by Federal Regulations	All
Activities of Daily Living			
Community Education			X
General Clinic Services (100% Locally Funded)			
Outreach			X
Occupational health services			
Personal care			X
Pharmacy services-Alternate Drug Delivery Site			
Hypertension screening, referral, and counseling			X
Respite care services			
Other:			
SPECIALTY CLINIC SERVICES (List)	Income A only	Defined by Federal Regulations	All
DENTAL HEALTH SERVICES	Income A only	Defined by Federal Regulations	All
Preventive Clinic Services - Children	X		
Preventive Clinic Services - Adults			
Restorative Clinic Services			
Community Education			X
Other:			

LOCAL GOVERNMENT AGREEMENT, ATTACHMENT A(2.)

VIRGINIA DEPARTMENT OF HEALTH  
COMMUNITY HEALTH SERVICES

PUBLIC HEALTH SERVICES PROVIDED  
UNDER LOCAL ORDINANCE

Neither the <i>Code of Virginia</i> nor Regulations of the Board of Health requires the following services to be provided by the local health department	Place an X in this column if service is provided for locality	Local ordinance code cite	Provide a brief description of local ordinance requirements
Accident Prevention			
Air Pollution			
Bird Control			
Employee Physicals			
General Environmental			
Housing - BOCA & local building codes			
Insect control			
Noise			
Plumbing			
Radiological Health			
Rodent Control			
Solid Waste			
Swimming facilities			
Weeds			
Smoking Ordinances			
Other environmental services (Identify)			

LOCAL GOVERNMENT AGREEMENT, ATTACHMENT A(2.)

VIRGINIA DEPARTMENT OF HEALTH  
COMMUNITY HEALTH SERVICES

PUBLIC HEALTH SERVICES PROVIDED UNDER  
LOCAL ORDINANCES OR CONTRACT WITH LOCAL GOVERNMENTS

OPTIONAL PUBLIC HEALTH SERVICES

For Each Service Provided, Check Block for Highest Income Level Served			
	Income A only	Defined by Federal Regulations	All
Employee physicals			
Primary care for inmates in local jails or correctional institutions			
Other medical services (List)			
Other (please list)			





**Memorandum**

**To:** Mayor Brown, Vice-Mayor Harshberger, Members of City Council  
**From:** Melissa Skelton, Zoning Administrator  
**Date:** January 2, 2018  
**Subject:** Automatic Passenger Count Agreement

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In 2015, the City of Radford and Radford Transit received 2 grants to acquire Hardware and Software for Automated Passenger Counter on our transit buses. An Automated Passenger Counter (APC) is an electronic device that is installed on transit vehicles which accurately records boarding and alighting data. This technology can improve the accuracy and reliability of tracking transit ridership over the traditional methods of manual accounting by drivers.

These devices will help to improve the accuracy of reporting ridership as well as analyzing transit use patterns by linking boarding and alighting data with stop or station location.

The Transit Committee, which consisted of Radford University Staff, City Staff and Radford Transit Staff, released the RFP in August of 2017 to receive proposals for the Automated Passenger Count system. All proposals were due mid-September in which six (6) were received. The Committee spent several meetings reviewing the scorings that each member attributed to each proposal. The committee's scores unanimously reflected that Passio Technologies met all the requirements outline in our Request for Proposal, as well as meeting the budget requirements.

Please advise if you have any questions.

Thank you

cc: Mr. David Ridpath, City Manager

## RFP 2018-2208 APC

Proposer	Hardware/Software Price	Yearly Reoccurring Cost	Requirements
Passio	\$206,756.50	\$29,808.48	met requirements
ETA	\$260,300.00	\$39,800.00	met requirements
Syncromatics	\$280,595.00	\$28,455.00	met requirements
UTA	\$159,510.00	\$19,000.00	did not meet all requirements
RideSystems	\$77,800.00	\$22,800.00	did not meet all requirements
Connexionz	\$300,500.00	\$30,000.00	did not meet all requirements

**THE CITY OF RADFORD  
STANDARD CONTRACT**

**Contract Number: RFP 2018-2208-APC**

This contract entered into this 11th day of January, 2018, by Passio Technologies, located at 6100 Lake Forrest Dr., Suite 410, Atlanta, GA 30328, hereinafter called the "Contractor" and the City of Radford, called the "Purchasing Agency, located at 10 Robertson St, Radford, VA. 24141."

- I. **WITNESSETH** that the Contractor and the Purchasing Agency, In consideration of the mutual covenants, promises and agreements contained, agree as follows:
- II. **SCOPE OF WORK:** The Contractor shall provide the goods/services to the Purchasing Agency as set forth in the Contract Documents.
- III. **TERM OF CONTRACT:** From \_\_\_\_\_ through \_\_\_\_\_ with \_\_\_\_\_ (1) year renewal options or as negotiated, to include all contractual provisions contained herein.
- IV. **THE CONTRACT DOCUMENTS SHALL CONSIST OF:**
- A. This signed form (Standard Contract inclusive of General Terms and Conditions.
  - B. Passio Technologies, Inc Service Agreement, License, Terms and Conditions.
  - C. The City of Radford's Request for Proposal (RFP) RFP 2018-2208-APC dated August 9, 2017, Addendum NO. 1 dated August 24, 2017 and Addendum NO. 2 dated August 31, 2017. (Attachment A);
  - D. Contractor's Proposal signed and dated September 15, 2017 (Attachment B);
  - E. Contractor's supplemental contract correspondence (Attachment C); (e.g., clarification and negotiation points) dated as follows:
    - 1. Additional Information and clarification letter dated October 20, 2017
    - 2. Email correspondence dated October 27, 2017
  - F. This Standard Contract identifies terms as negotiated and as agreed by both parties. In the event there is a conflict between the Standard Contract, Request for Proposal # RFP 2018-2208-APC, the Contractor's Proposal or Negotiation/Clarification points, the Standard Contract shall prevail.

**IN WITNESS WHEREOF**, the parties have caused this Contract to be duly executed intending to be bound thereby.

**CONTRACTOR:**

**PURCHASING AGENCY: City of Radford**

**Print Name:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## Service Agreement, License, Terms and Conditions

This Service Agreement, License, Terms and Conditions Agreement ("Agreement") dated \_\_\_\_\_ (the "Effective Date") is between Passio Technologies, Inc., a Georgia Corporation, located at 6100 Lake Forrest Dr., Suite 410, Atlanta, GA 30328 ("Passio") and The City of Radford ("Customer").

Customer wishes to purchase hardware and/or license Passio's proprietary software for the purpose of transit management. These areas include passenger counting, reporting, automated voice announcement, scheduling, automated customer service, passenger media capture/validation, and other related transit operations management software solutions. Passio will make these services available to Customer using the terms and conditions outlined in this agreement, the Proposal submitted September 15, 2017, and letter dated October 20, 2017 and agrees to follow the same terms and conditions.

### 1. SERVICES

- a. Passio agrees to perform for Client the agreed upon equipment, software, reporting, and training as outlined in this document, the quote, proposal of services, attachments, and/or all subsequent addenda.

### 2. IMPLEMENTATION

- a. Within 5 (five) working days of contract signature and official notification to proceed, Passio will provide customer with account setup information request and configuration information setup request.
- b. Customer to provide configuration information within 20 (twenty) working days of the Effective Date.
- c. Upon setup of customer account, a customer account manager will be assigned. The customer account manager will schedule training sessions and installation based on equipment delivery schedules and customer requirements for the system(s) purchased.
- d. Service Activation typically is set for the first of the month following equipment installation. Earlier activation dates may be set at customer's request.

### 3. TRAINING

- a. Passio will provide instructional materials and training via web based internet sessions for all services purchased.
- b. Training will be included for supervisory functions, train the trainer, and operators.
- c. On Site Training may be provided at the Customer's request and for an additional fee plus reasonable and customary travel expenses including, but not limited to, airfare, ground transportation, parking, lodging, per diem, and administrative expenses.
  - i. Standard on-site training rate is \$1,575.00 per day per trainer unless indicated differently in an associated quote or statement of work.

### 4. PAYMENT FOR WORK

- a. All fees shall be paid in U.S. dollars within 30 days of invoice. Fees are non-refundable.
- b. Late payments will be subject to a monthly interest rate of 1.5%, or the maximum amount allowed by law if lower, and will be charged until payment is received by Passio.
- c. Customers with delinquent service fees are subject to service suspension or cancellation. Passio retains the right to charge a reinstatement fee for suspended or cancelled service.
- d. Customer shall pay for any costs related to collections incurred by Passio.
- e. Prices do not include state and/or local sales or use taxes. Customer is responsible for paying any such taxes or providing proof of tax exemption.
- f. Customer is responsible for all shipping and handling costs in addition to service and equipment fees.
- g. Recurring fees are billed at the earlier of install date or service start date.

### 5. TERM

- a. Standard Initial Term is 36 (thirty-six) Months. Pricing will not increase during this initial term.
- b. This Agreement shall commence on the Effective Date and shall continue in full force and effect thereafter unless and until terminated in accordance with the provisions of this Agreement.
- c. Services and reporting fees will automatically renew after initial term on a month to month basis. Customer may cancel at any time after the initial term by providing 30 days' written notice.

### 6. ACCEPTANCE OF SERVICES AND DELIVERABLES.

- a. Acceptance. All Services and/or Deliverables shall be provided in accordance with the specific Attachment(s). In the event that any Services or Deliverables are not in compliance with the specifications set out in the applicable Attachment(s), Client shall notify Passio in writing within thirty (30) days of its receipt. Client's failure to so notify Passio within the aforesaid time period shall deem the Services and Deliverables accepted, and Passio shall have no further obligations with regards to same.
- b. Correction. To the extent that Client gives notice to Passio as set out in Section 6.a. above, Client shall cooperate with Passio in identifying in what respects the Services or Deliverables have failed and allow Passio the opportunity to correct such failures. Passio shall promptly correct any actual deficiencies, and to the extent reasonably possible, within ten (10) days of Client's written notice thereof.

- c. In the event that the correction approach outlined in section 6.a. and 6.b. does not resolve issues with services or deliverables meeting specifications outlined, Passio will determine which extended actions are required to resolve open issues and initiate those actions at their expense.

#### 7. RIGHTS TO WORK PRODUCT & ASSIGNMENT.

- a. Work Product. All software, hardware, programs, source code, object code, developments, designs, processes, technical information (whether in human or machine readable form), inventions (whether or not patentable), ideas, improvements, documentation, works of authorship, mask works, company lists, and all other work product of any type or nature are referred to as "Work Product" in this Agreement.
- b. The parties agree that any intellectual property, work product or other material created by Passio during the course of its providing its work (or any such property, product or material previously created and used as a part of its work) is the property of Passio which will retain all right, title and interest in said property, product or material.
- c. All software, hardware, programs, source code, object code, developments, designs, processes, technical information (whether in human or machine readable form), inventions (whether or not patentable), ideas, improvements, documentation, works of authorship, mask works, company lists, and all other work product of any type or nature are referred to as "Work Product". Any intellectual property, work product or other material created by Passio during the course of its providing its work (or any such property, product or material previously created and used as a part of its work) is the property of Passio which will retain all right, title and interest in said property, product or material.

#### 8. WARRANTIES.

- a. Passio warrants that: (a) Passio has full rights and authority to execute, deliver and perform its obligations under this Agreement; (b) each of the Passio Personnel assigned to perform Services under this Agreement shall have the proper skill, training and background so as to be able to perform in a manner consistent with professional standards and practices; (c) all Services will be performed in accordance with this Agreement, including any specifications, performance standards, or service levels contained therein; and (d) no Deliverable or other Work Product provided hereunder, or process or methodology used in performing Services, infringes or shall infringe on any third party intellectual property right or contractual right.
- b. By Client. Client warrants that: (a) it has the full right, power, and authority to enter into this Agreement; and (b) it is the owner of, or has the right to authorize Passio to utilize, such materials as it may provide to Passio as may be necessary to perform the Services, and the use of such materials as authorized does not and will not infringe any existing copyright, violate the right of privacy, or constitute the invasion or infringement of any other intellectual or personal property right of any third person, firm, corporation, or other entity.
- c. Excluded Parties. Passio represents that it has no knowledge that any prospective business partner, employee, subcontractor or supplier is included in the General Services Administration's (GSA's) List of Parties Excluded from Federal Procurement and Non-Procurement Programs.
- d. Lobbying Disclosure Act. Passio represents that it has no knowledge that any prospective business partner, employee, subcontractor or supplier is in violation of the Lobbying Disclosure Act of 1995.
- e. Non-Discrimination. Passio represents that it does not discriminate against any employee or applicant for employment because of race, religion, creed, national origin, age, gender, marital status, citizenship, disability, sexual orientation, veteran's status, or membership in any other protected group.

#### 9. INDEMNITY AND LIMITATION OF LIABILITY.

- a. By Both Parties: Each party agrees to defend, indemnify and hold the other party harmless from and against any and all claims, demands, actions, liabilities, damages or expenses (including reasonable attorney's fees, if ordered by a court of competent jurisdiction) arising out of or relating to any personal injury (including death), property damage or any other damage (including those related to claims of infringement on any intellectual property right) occurring wholly or in part due to acts or omissions to act by either party or a person directly or indirectly employed or supervised by the party in connection with the performance of its work or services.
- b. LIMITATION ON LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### 10. TERMINATION.

- a. Notice Requirement. After the initial period, either Party for any reason may terminate this Agreement upon thirty (30) days written notice to the other Party unless the notice establishes a later termination date.
- b. Entitlement to Payment. In the event this Agreement is terminated pursuant to this Article, Passio shall be paid for work that has actually been performed and which has been requested and authorized by Client in accordance with this Agreement and any Attachment(s) on and prior to the effective date of such termination, provided such termination is not for cause.
- c. Obligations Upon Termination. Each party shall promptly return to the other party any and all Confidential Information of the other party. On termination, all obligations of the parties under this Agreement related to 1) confidentiality; 2) indemnity; 3) ownership rights; and 4) any applicable warranty, shall survive the termination or expiration of this Agreement.

- d. Refunds. No refunds shall be issued for services or equipment.
- e. Any notices or communication required or permitted shall be sufficiently given if sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

To Passio:

6100 Lake Forrest Dr.  
Suite 410

Atlanta, GA 30328

To:

#### 11. TERMINATION FOR CAUSE

- a. Either party may terminate this agreement for cause upon 30 days' written notice provided to the other party, and the notified party's failure to cure or correct the cause of the termination notice, to the reasonable satisfaction of the party giving such notice.
- b. The notice shall include the following:
  - i. Specify the failure(s) endangering performance of the order
  - ii. Allow a period of at least 30 days for the party to cure the failure(s)
  - iii. Notify the party that unless the situation is cured, the other party may terminate the order
  - iv. Once the party receives the cure notice, they are given the opportunity to remedy the problem. Customer will perform reasonable updates to hardware and/or software.

#### 12. GENERAL.

- a. Assignment. This Agreement shall be binding upon the parties' respective successors and permitted assigns. Neither party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party. Any such assignment shall be subject to the assignee's express written acceptance of all of the terms of this Agreement. Both parties agree that any permitted assignment it makes hereunder shall not relieve the parties of their respective obligations hereunder.
- b. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia without reference to the conflicts of law provisions thereof. The sole jurisdiction and venue for any litigation arising out of this Agreement shall be the state courts in the State of Georgia in the county of Fulton, and the parties irrevocably consent to the personal jurisdiction of such courts.
- c. Waiver. A failure of either party to exercise any right provided for herein, shall not be deemed to be a waiver of any right hereunder.
- d. Complete Agreement. This Agreement and the Attachment(s) set forth the entire understanding of the parties as to the subject matter therein and may not be modified except in a writing executed by both parties. No modification, amendment, supplement to or waiver of this Agreement hereunder, or any of their provisions shall be binding upon the parties hereto unless made in writing and duly signed by both parties.
- e. Severability. In the event any one or more of the provisions of this Agreement is invalid or otherwise unenforceable, the enforceability of remaining provisions shall be unimpaired.
- f. Independent Contractor. Passio's relationship with Client will be that of an independent contractor. Nothing in this Agreement is to be construed as designating Passio an agent or employee of Client.
- g. Remedies. The rights and remedies of the parties as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to them in law or in equity.
- h. Surviving Sections. Sections 7, 8, 9, 10.c, and 11 shall survive any expiration or termination of this Agreement.
- i. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

#### 13. EQUIPMENT WARRANTY

- a. All equipment is sold with a standard one-year manufacturer's warranty
- b. Equipment Warranty covers all equipment failure due to normal wear and tear or manufacturer's defect. Equipment warranty does not cover theft, damages sustained from an accident or vehicle malfunction, vandalism, or damage due to neglect by a driver, passenger, or other individual.
- c. Extended warranties are available for purchase for selected hardware components. Warranty fees must be received at initial purchase. Warranty terms and conditions are outlined by component in statement of work.
- d. Warranty claims may be charged a service fee of \$95.00 (ninety-five dollars) per piece of equipment plus shipping.
- e. NON WARRANTY REPAIRS: All costs for repair or replacement of units not covered by warranty will be billed at cost for equipment, shipping, and/or labor for overhead and processing.

#### 14. ON SITE SERVICE AND REPAIR

- a. All on-site service will incur additional charges.
- b. Passio does not provide on-site personnel post install, but will coordinate and schedule on site service requested by customer.

- c. Customer will be charged for trip charges and/or travel expenses, hourly fees, and minimum charges as incurred. Passio will remotely support customers who use internal (customer) employees to conduct on site repairs for no additional fees.

#### 15. INSTALLATION

- a. Installation quotes are based on fleet descriptions provided by customer and fleet availability at designated times and locations.
- b. If scheduled vehicles are unavailable or are not in working mechanical order, or vehicle design does not match descriptions, additional fees may be incurred for extended installation or additional trip charges.
- c. Interior design of vehicles within a fleet can differ, even those that have the same make, model, and manufacturer.
  - i. Factors including, but not limited to, upgraded interior materials, additional insulation, mounted electronics, wiring pathways, and accessibility of panels and mounting areas may increase complexity and cost of installation.
- d. Customer is required to identify source location(s) for power, ground, and ignition sources for each component to be installed on board vehicle(s).
- e. Acceptance. Customer may, at their discretion, inspect hardware installation prior to installers or technicians departing upon completion of installation. All hardware installations will be tested and confirmed by Passio installers/technicians prior to completion of install.
- f. Installations are deemed accepted by customer upon completion of work on all available vehicles unless Passio is notified, in writing, of any identified deficiencies. Notification shall include appropriate descriptions, photos, or other documentation, to indicate exceptions to hardware installation acceptance.

#### 16. SERVICE LEVELS

- a. Availability of Service. Passio will take commercially reasonable measures to meet 99% availability of Service to Customer. Service availability target will not include periodic and pre-scheduled maintenance.
- b. Notification. Passio will make all reasonable efforts to provide Customer with prior notice of maintenance items which will typically be done during off-peak periods.
- c. Documentation and Confirmation. Passio support personnel will, under most circumstances, log and confirm support items within one working day. Resolution targets for high level support items are within two working days or less.
- d. External Network Support. Customer understands that Passio technologies contracts with industry proven network support organizations including, but not limited to, cloud and report server providers and data carriers.
- e. Hardware Replacement. Passio will typically order and/or ship replacement hardware within one working day of receiving completed Return Merchandise Authorization from Customer. Replacement items not in stock will be processed using the available supplier with the fastest replacement schedule available at the time.

#### 17. CUSTOMER SYSTEM MANAGEMENT

- a. Customer understands and accepts that the technology solutions offered by Passio are dynamic and require designated on site contact(s) to update software, confirm connectivity, and troubleshoot hardware and system issues.
- b. Customer has the option to provide configuration updates such as routes, drivers, and stops to Passio for updates, typically within 2 (two) working days for standard updates. Customer may, at their option, self-update configuration information.
- c. Passio will provide remote support for connectivity, configuration, and hardware troubleshooting.
- d. Customer shall not rent, sell, assign, lease, or sublicense the Services. Customer shall not use the Services in a service bureau, outsourcing or other arrangement to process or administer data on behalf of any third party.
- e. Customer shall not knowingly access, store, or transmit via the Services any material that (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or offensive; (ii) facilitates illegal activity; (iii) is discriminatory; or (iv) causes damage or injury to any person or property.
- f. Customer shall not violate or attempt to violate the security of Passio's networks, including (i) accessing data not intended for Customer; (ii) accessing a server or account which Customer is not authorized to access; (iii) attempting to scan or test the vulnerability of a system or network or to breach security or authentication measures; or (iv) attempting to interfere with the availability or functionality of the Services, including by means of submitting a virus, overloading, flooding, spamming, mail bombing or crashing.
- g. Customer acknowledges and agrees that:
  - i. That the Services are an information tool only and is not a substitute for competent management and oversight of Customer's Vehicle Fleet, transportation system, and personnel;
  - ii. that the Services depend upon data being transmitted over the internet, Customer's network, GPS satellites, and third-party carrier networks, and that, Passio has no control over the functioning of the internet, Customer's network, GPS satellites, or the network of a carrier; and
  - iii. that Customer alone is responsible for acquiring and maintaining Customer's Vehicle Fleet, Customer's network, Customer's internet access, and the rest of Customer's physical and technological infrastructure.

**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date written above.

Signed _____	Signed _____
Name _____	<b>Mitchel Skyer</b>
Title _____	<b>President</b>
Company _____	<b>Passio Technologies, Inc.</b>
Date _____	Date _____

**PRICE QUOTE**

Initial costs including, but not limited to, on site installation, configuration, equipment, setup, testing, and other system related fees are outlined in the quote(s) referenced following this section.

Recurring fees are referenced in the quote(s) following this section.